[FRAMEWORK REMOVED]

The affirmative burden is to prove that those used deadly force against their abuser had reason to believe that the abuser posed a threat life or safety and that that force was necessary to avert the threat.

CONTENTION ONE: The abused have reason to fear for their life and safety.

A. The only difference between violent relationships that end in death and those that don’t is the level of violence by the batterer. Those who resort to deadly force have reason to fear for their lives.

MICHAEL DOWD [Director of Pace University Battered Women's Justice Center, Director of Special Projects and Advocacy, New York State Office for the Prevention of Domestic Violence. “BATTERED WOMEN: A PERSPECTIVE ON INJUSTICE” CARDOZO WOMEN'S LAW JOURNAL. Vol. 1 1993-1994]

Attention often focuses on women who kill their abusers rather than those that don't. This unequal attention fuels the misperception that the battered woman is deviant and in need of repair."9 3 Studies have shown that battered women who kill have experienced a greater level of violence than is reported by battered women who do not kill.19 4 Conduct and characteristics, in fact, significantly differ from those of abusive men in non-homicidal relationships as opposed to those of abusive men in homicidal relationships. In Dr. Angela Browne's 1987 study, battered women who killed their abusive spouses exhibited no characteristics that would differentiate them from battered women who did not kill their spouses.195 The only significant differences between the groups were that women in the homicide group were somewhat older and from a slightly higher socio-economic background than women from the comparison group.' 96 However, when the characteristics of the batterers of the two groups were compared, significant differences between the abusive conduct of men in the homicide and non-homicide groups were found.197 Men in the homicide group tended to use drugs9 8 and excessive alcohol' 99 more frequently than those in the non-homicide group. Men in the homicide group were also significantly likely to have threatened to kill someone other than themselves, 20 0 and to have abused one or more children.20 ' Finally, the abuse of women in the homicide group was more frequent,20 2 more injurious,20 3 and more likely to include sexual abuse than the abusers in the non-homicide group.20 4

B. Studies of the abused who used deadly force clearly show that they did so in self-defense, they feared for their lives for good reason.

Geris SERRAN AND Philip FIRESTONE [School of Psychology, University of Ottawa, Department of Psychiatry, University of Ottawa]“Intimate partner homicide: a review of the male proprietariness and the self-defense theories” [Aggression and Violent Behavior](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/journal/13591789) [Volume 9, Issue 1](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/journal/13591789/9/1), January–February 2004, Pages 1–15 “Browne (1987) notes that… and [[Willbanks, 1983]](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB55).

[Browne (1987)](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB10) notes that although there exists more of a focus on violence within families and books documenting the experiences of the ‘battered woman,’ little is known about the progression of violence, or those cases that result in death. Women generally do not kill, but when they do, it is often in their own defense. A review of police records on spousal homicides in Canada found that the majority of women who killed their partners were beaten by them [(Chimbos, 1978)](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB13). Similarly, Totman (1978), studying women in a California State Prison, reported that of 30 women who had killed their partners, 29 had been abused by them. In Campbell's (1992) sample of female-perpetrated homicides where the victim was a current or estranged husband or boyfriend, male victims had beaten their partners in 79% of the cases. In her sample, only three women had killed their partners without a history of being battered and without their partners precipitating the killing through violence or the threat of violence. [Grant (1995)](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB32) interviewed 13 women, ranging in age from 26 to 65 years of age who were convicted for the manslaughter of their intimate partners. Grant attempted to determine the women's perceptions of their experiences with their partners that resulted in either the death or serious injury of that person. The women described the killing as trying to stop the violence against them. Many of the women were threatened with their own death at the time of the killing and believed their own death was inevitable. [Polk (1994)](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB41) examined 12 case studies and concluded that in 8 of the 12 cases, women had killed their sexual partners in response to the violence of the man. In only two cases was the killing in response to the threat of the man leaving, and no cases resulted out of jealousy on the part of the woman. These findings are supported by other researchers [[Browne, 1987]](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB10), [[Daly & Wilson, 1988]](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB18) and [[Willbanks, 1983]](http://www.sciencedirect.com.ezp1.lib.umn.edu/science/article/pii/S1359178902001076#BIB55).

C. The abused are justified in fearing for their lives even when violence is not presently occurring.

KIT KINPORTS [Professor, University of Illinois College of Law “DECONSTRUCTING THE "IMAGE" OF THE BATTERED WOMAN: SO MUCH ACTIVITY, SO LITTLE CHANGE: A REPLY TO THE CRITICS OF BATTERED WOMEN'S SELF-DEFENSE” 23 St. Louis U. Pub. L. Rev. 155. 2004]

Focusing on self-defense's imminence requirement, some critics argue that a battered woman who kills under non-confrontational circumstances might reasonably fear future abuse, n136 but she cannot honestly and reasonably believe she is in imminent danger of harm at the time she acts. n137 There are four responses to this objection. First, research shows that battered women tend to become hypersensitive to their abuser's behavior and to the signs that predict a beating. n138 Many battered women who kill say that something in the abuser's behavior changed or signaled to them that this time he really was serious about carrying out his threats to kill. n139 That experience may enable battered women to recognize the [\*181] imminence of an attack at a time when others without their prior experience would not. Second, given her history, a battered woman may reasonably come to believe that the only time she can realistically protect herself is when her abuser is, for example, asleep. She may have learned that trying to defend herself during a beating is futile and merely escalates the violence. n140 She may have tried numerous other ways of protecting herself and escaping the relationship, only to find that the criminal justice system and social service agencies were unable or unwilling to help her and that her husband would find her, bring her back, and punish her with even more severe abuse for attempting to leave him. n141 In fact, research shows that battered women are often attacked and even killed when they try to leave the relationship and the batterer fears that he is losing control. n142 [\*182] Third, even though "inevitable future harm" may not be the same as "imminent harm," n143 imminence is in some sense a proxy for necessity. n144 The battered woman who kills her sleeping husband arguably satisfies that notion of imminence, just like the hostage who is being slowly poisoned over a period of time, or who has been told to expect to die later in the week, and who suddenly has a window of opportunity to attack her kidnapper and save her life. n145 Finally, it is important to note that standard self-defense doctrine requires only a reasonable belief in the imminence of the threat, and not actual imminence. As the Oklahoma Court of Criminal Appeals observed, "the issue is not whether the danger was in fact imminent, but whether, given the [\*183] circumstances as she perceived them, the defendant's belief was reasonable that the danger was imminent." n146 Nevertheless, some critics counter, the imminence requirement cannot be satisfied in non-confrontational cases because the woman always had the option of leaving before the abuser woke up. n147 In addition to the difficulties that a battered woman faces in leaving the relationship or otherwise protecting herself from the abuse, n148 other commentators have pointed out that "a rule that demands the defendant "avoid the confrontation'" by leaving the relationship is "a "pre-retreat' rule [that] ... has never been part of standard self-defense law." n149 Just as "the man who goes for the fiftieth time to the violent gang-bar is not deprived of his self-defense claim because he "should have left' [\*184] before the violence erupted," the law should likewise recognize that "there is no general duty to avoid violence before the confrontation" when battered women raise a claim of self-defense. n150

CONTENTION TWO: There is no other reasonable way to get out of the situation.

A. The abused are in a double bind. Either they can attempt to leave and risk a possible deadly response, or they can stay and suffer violence that will inevitably escalate.

DOWD 2:

Underlying criticism of a woman's inability to leave is the assumption that leaving will end the violence. In a few cases, especially if the abuse is in its earliest stages, this may be true. 27 However, for many women, violence continues or intensifies after they leave. The loss of control that an abusive man feels when his spouse leaves him often translates into increased depression and anger, motivating [motivates] him to take extreme measures to regain control over his spouse's life.' 28 Ironically, although the batterer is reacting to the loss of his spouse when he seeks her out after separation, the chance of his murdering her increases at his time.1 2 9 It is estimated that a woman is at a seventy-five percent greater risk of being killed by her batterer when she leaves than she is when she remains.18 0 Although nothing can predict when an abusive husband will follow his spouse,131 the probability of his doing so increases as the relationship lengthens.18 2 Studies also suggest that the degree of the abuser's violence may continue to escalate even after separation. 8 8 Of the 1.5 to 2 million women who seek medical treatment each year because of an assault by a male partner,1 - 4 approximately seventy-three percent sustained their injuries after leaving the household. 13 5 Ac- cording to the United States Department of Justice, 8 6 a separated or divorced woman is fourteen times more likely to be the victim of a violent crime1 7 perpetrated by her ex-spouse 18 than is a married woman who remains in the abusive house- hold. 3 9 Although separated and divorced women comprised only ten percent of the surveyed population, they sustained approximately seventy-five percent of the intimate violence.140 Only fifty-six percent of these crimes were reported to the police.14 ' This potentially lethal danger certainly impacts upon a battered woman's decision to stay or return to an abusive household.1 42 Finally, the danger to a woman from an ex-spouse may linger[s] for many years.1 43 During this time, the batterer may constantly phone the woman, her family or her acquaintances both day and night. He may also phone or visit her place of business. He may appear at her home, her children's schools and play- grounds, or the grocery store.'" Even if the woman flees the state, a batterer will frequently seek her out. This data indicates that, for the short-term, a battered woman may be safer if she remains in the abusive household. However, in the long-term, the abuse will escalate and be as dangerous as separation violence. Thus, most scholars and advocates recommend that battered women leave the abusive household.

This double bind has been disastrous for the abused. While the rate that the abused kill their abusers has decreased, abusers continue to kill at the same levels.

CARA COOKSON [J.D. candidate 2010, Vermont Law School; A.B. cum laude 2004, Mount Holyoke College. “Note: Confronting Our Fear: Legislating Beyond Battered Woman Syndrome and the Law of Self-Defense in Vermont” Vermont Law Review. 34 Vt. L. Rev. 415. 2009]

Nationally, the likelihood that a female partner will kill her abuser remains extremely rare; a woman is much more likely to be killed by an intimate partner than to kill an intimate partner herself. [n14](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n14) Between 1976 and 2005, the number of men murdered by intimates decreased by 75%, while the number of women killed by intimates remained steady. [n15](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n15) However, the broader social and legal Implications, rather than the numbers, have made cases in which women kill their intimate partners compelling. Notwithstanding their rarity, the issues raised by battered women's self-defense continue to generate debate among scholars and social commentators. [n16](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n16) From a sociological standpoint, women who kill anyone let alone their husbands or other intimates defy traditional notions of women as "passive" caregivers and nurturers. [n17](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n17) The law's treatment of battered- woman defendants serves as a marker in the broader struggle for  [\*420]  female equality. [n18](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n18) As Elizabeth M. Schneider's work suggests, how the law responds to battered-woman defendants is not a sporadic, "individual" problem, but a social problem that is "shaped by a larger culture of social violence . . . ." [n19](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334875994552&returnToKey=20_T14516245290&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.550163.2935678472" \l "n19)

This discrepancy occurs because abusers will seek out confrontations while the abused falsely believe they are safe because of separation options.

DOWD 3:

Although much national attention has been focused on battered women who killed their spouses, the result of lethal violence between partners usually results in the death of the woman) 7' In fact, no other person poses a greater risk of death to a woman than her male partner. 72 Between 1976 and 1987, the number of women who killed male partners decreased twenty-six percent;173 the male intimate homicide rate did not similarly decline.7 4175- The decline in homicide rates by women has been linked to the increased availability of shelters and services for abused women and to domestic violence prevention legislation.17 6 Additionally, intervention programs remove women from situations of escalating violence which usually precede the homicide.177 If a battered woman turns to spousal homicide, it is usually a response to an extreme level of violence, one that exceeds the violence present in non-lethal battering relationships. Intrafamily homicide accounts for approximately seventeen percent of this nation's homicides; women are the most frequent victims.' 78 About half of all intrafamily homicides are spousal murders.' 79 This percentage figure translates to eleven husbands or wives killed by a spouse every seven hours.18 0 The gap between the intimate homicide rates for men and women has widened dramatically in recent years. Recent studies further indicate that non-marital intimate homicide rates do not reflect the overall trend.' 8 ' Homicides of intimate partners corn- mitted by unmarried men have actually increased in these years, while homicides by unmarried females have remained fairly constant.18 2 A recent study by Browne and Williams linked the drastic change in marital homicide rates perpetrated by women [linked] to the increased availability of services for abused women (such as shelters and crisis hotlines) and to the presence of domestic violence legislation. States which offered a high number of such services were more likely to see a downward trend in female partner homicides than were states which failed to .offer these services.' 8 3 One possible explanation for the rate of intimate homicide among non-marital couples not being similarly affected is that services (e.g., shelters) are not generally available or structured for individuals in non-marital relationships.18 4 Men kill more often than do women,18 5 and they tend to kill women more often than women kill men.'8 6 Furthermore, women kill for different reasons and under different circumstances than men. Unlike men, women are more likely to kill an intimate partner than to kill any other person.187 The men that women kill typically precipitated the fatal confrontation I8 8 and the woman's lethal act was most often committed in self-defense.18 9 Studies also show that most female defendants are likely to have been the victims of abuse by their spouses prior to the lethal incident,190 and most often attempted to get outside help before committing spousal homicide.1 9 These characteristics of women who kill partially explain why special services for abused women decrease their homicide rates. If abused women successfully escape from the batterer and find long-term shelter or other services, they are not likely to find themselves physically confronting their ex-spouses.192 After leaving, a woman is not likely to seek out her abuser or provoke an abusive episode; a man, however, is likely to seek out and confront his spouse.

Therefore, current interventions are ineffective because the focus on the abused not the abuser. When the abused leave, their need to defend themselves does not decrease, they are in fact more likely to be killed if they do. However, the abused’s likelihood of successfully defending themselves plummets when they leave, as evidenced by the lower rate at which they use deadly force. The impact is clear: when the abused leave, they are more likely to be killed because their abusers will hunt them down and initiate a conflict, so deadly force must be a permissible response.

B. Targets of extreme domestic violence who kill their abusers reasonably believe that deadly force is necessary to prevent their death. This type of relationship must be understood as an ongoing homicidal interaction, not as a discrete act of violence. Domestic violence is murder by installment.

Robbin Ogle and Susan Jacobs [Associate Professor of Criminal Justice, Associate Professor Emeritus of Criminal Justice – University of Nebraska Omaha. “Self-Defense and Battered Women Who Kill: A New Framework” 2002.] “Second,there is…to this knowledge” (p. 77) “This new theoretical…as legally justified” (p. 84), “The contrition phase…available to her” (p.82).

Second, there is the misconception that battering is primarily about abuse and control, not killing, even though killing may occur occasionally. This assumption is untenable because the reality is that battering does re­sult in many killings each year. About 500 to 600 batterers are killed each year by their victims and between 2,000 and 4,000 battering victims are killed each year by their abusers (FBI 1993). In other words, battering is of­ten a homicidal process regardless of the batterer's initial intentions. More disturbing yet, in the cases where batterers kill victims, about 50% to 75% involve what experts call separation attacks (Bachman 1994; Browne 1987; Copelon 1994; Felderand Victor 1996; Gillespie 1989; Kahn 1984; Klein 1996; Mahoney 1991), when the victim is trying to leave or has just left the batterer. Another large proportion of killings occurs at the climax of a bat­tering incident or when the victim attempts to utilize other social resources to end the battering (Bachman 1994; Browne 1987; Copelon 1994; Downs 1996; Felder and Victor 1996; Kahn 1984; Klein 1996; Mahoney 1991). In essence, the victim's chances of being killed increase significantly each time she attempts to do what we socially expect and require her to do to end the battering: leave or utilize social resources that often fail to accommo­date the lethality of her situation. In light of these realities, we offer a different approach to understanding the imminence of threat, lethality, and reasonableness of battering victim response in these relationships. In a typical self-defense scenario, we are accustomed to thinking of homi­cide as a single incident resulting in death. This single incident generally in­volves two physically equal combatants, with relatively superficial knowledge of each other, in a short-term confrontation in which both par­ties see a foreseeable end. This is because laws were created by men to serve the interests of men. Sometimes referred to as the barroom brawl scenario, self-defense law was intended to give men the right to protect themselves le-thally if necessary in a fight. Battering, however, is a long-term, ongoing confrontation between parties who are not physical equals, wherein the par­ties have intimate knowledge of each other, and with no foreseeable end to the interaction. In fact, battering has most often been described as a repeti­tive cycle punctuated by intermittent periods of extreme violence (Angel 1996; Browne 1987; Browning and Dutton 1986; Blackman 1986; Douglas 1991; Downs 1996; Ewing 1987; Finkel 1991; Frieze and Browne 1989; Stark 1995; Steinmetz 1977; Walker 1979). However, in the battering cycle, what occurs between these intermittent periods of violence does not repre­sent a return to so-called normalcy but rather the beginning of tension de­velopment, degradation, and other abuse leading to the next incident of extreme violence (Browne 1987; Browning and Dutton 1986; Campbell 1992; Douglas 1991; Downs 1996; Ewing 1987; Frieze and Browne 1989; Kahn 1984; Prince and Arias 1994). To deny the existence of this ongoing violent interaction process in battering relationships is to ignore the social reality in which battering victims function and make decisions. This contextual or social framework is essential to understanding the battering relationship as an ongoing homicidal interaction (where, after contrition disappears or changes, violence is not just one characteristic of the relationship as an interaction but rather is the primary characteristic of the relationship). Violence becomes the defining characteristic in the rela­tionship because it is the basis for all interactions and the foundation upon which the two participants respond to each other. This perspective would allow a more realistic examination of the battering victim's perception of danger and imminence, as well as the victim's chosen response to this knowledge.

*Continues: [pg. 84]*

This new theoretical framework posits that battering is initially a form of discrimination where the batterer seeks to control the victim and make retaliation or escape too costly. However, over time this effort moves from moderate control, using threats and minor violence and then contrition, to a need for complete and absolute control of the relationship and the vic­tim. Such complete control is unlikely to be accomplished with threats, in­timidation, and contrition when the victim no longer believes in those. At that point, the battering cycle changes from three phases to two phases; tension building becomes shorter and acute violence [becomes] more frequent and in­tense. The victim [abused] will recognize this change and begin to utilize her per­sonal coping resources to end the increasing violence. The batterer will interpret these efforts by the victim as a loss of complete control and will again increase the violence to make his point and regain control. We should also see efforts by the batterer to block coping resources of the vic­tim so that they cannot threaten his control again. Eventually, the victim will realize she needs outside assistance in order to end the violence and protect herself. She will then contact social help­ing resources (e.g., police, shelter, crisis center, counselor, doctor, etc.) to obtain assistance for ending the violence. This involvement of outside re­sources increases the risk for the victim because it increases the risk to the batterer. The chances of being identified and sanctioned for the battering have increased. If those social helping resources fail to completely and suc­cessfully end the violence, the victim faces increased violence and isola­tion. The batterer will interpret these efforts by the victim as [a] an even greater risk to his complete control, prompting an even more aggressive re­sponse to shut off access to those social helping resources and to regain con­trol of the victim and the relationship. This represents an escalation process where the victim becomes increasingly isolated in the escalating violence and the batterer more powerful each time an effort is made to end the battering and fails. This perspective represents an interaction process whereby the victim's efforts to obtain assistance to end the violence result in an escalation of the violence by the batterer and efforts to block coping mechanisms so that they do not threaten his control again. In this escalation process, there are no nonconfrontational periods for the victim. There is no return to normal relations; threats, intimidation, and violence [from the batterer] become the primary method of control and the primary characteristic of interaction in the relationship. The victim [and] lives in constant fear with high negative affect, high arousal, simply waiting for the next explosion of violence. The victim would [and] rea­sonably come[s] to view her situation as constantly lethal. Consequently, [so] the choice of lethal self-defense anywhere in this cycle could be interpreted as legally justified.

*Continues: [pg. 82]*

The contrition phase will have disappeared from the cycle or will simply be used by the batterer as a source of tension and unpredictability for the victim, as noted by Walker (1979). Because the victim no longer believes the contrition, it is not useful to the batterer to prevent the victim from leaving, and abuse and violence will now be the primary methods utilized. At this point, the relationship consists of shorter periods of threats, abuse, and degradation (tension building) punctuated by more frequent and in­tense violence (acute battering) in order to regain and maintain complete power and control. This situation is constantly potentially homicidal. At this point, there are no nonconfrontational periods in the relationship; [since] it is one ongoing homicidal confrontation (See Figure 2). The victim [since the recipient] is con­stantly experiencing high levels of negative affect (i.e., fear, anger, etc.) and high chronic arousal which the batterer seeks to maintain because it serves his purposes (e.g., the next beating could be right around the corner if she is not completely compliant and only he can change that). It would be reason­able for the victim to perceive herself in constant danger of death or serious bodily injury with fewer and fewer coping options available to her.

C. In the majority of instances in which deadly force is used there were no other options because it was confrontational.

HOLLY MAGUIGAN: [University of Pennsylvania Law Review. December 1991. Vol 140, no 2. “Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals. Holly Maguigan.

"Confrontation" is used here to describe[s] a fact pattern that would entitle[s] a defendant to a self-defense instruction[.] under the law of most jurisdictions.34 A case is defined as [In] a confrontational battered woman's homicide35 if the defendant killed her spouse or lover and at trial evidence (disputed or not) was offered on the record and discussed on appeal (whether or not ruled admissible by the trial judge) that (1) he had abused her in the past,36 (2) on the occasion of the homicide he behaved in a way that, according to her testimony, she [the abused person] interpreted37 [the abuser] as posing [posed] an imminent38 threat of death or serious bodily injury to her, (3) she did not provoke40 his behavior by unlawful actions and was not the initial aggressor,41 (4) she violated no duty to retreat,42 and (5) [and] the force she used was proportional to the threat she perceived.43 A nonconfrontational case, on the other hand, is defined as a killing that occurred while either (1) the man was asleep, (2) the man was awake, but [or] the woman was the initial aggressor on the particular occasion, or (3) the woman hired or persuaded someone else to kill the man. The search44 [We] sought to identify all appeals from convictions in battered women's homicide cases in which a claim of self-defense had been raised at trial. Specifically, the search was aimed at appellate opinions45 issued in cases where (1) the defendant was a woman, (2) the defendant was accused of killing her spouse or lover,46 (3) [and] there was evidence of a history of abuse47 of the woman by the man, (4) the defendant claimed to have acted in self- defense,48 and (5) the defendant was convicted. No attempt was made to decide whether in fact the defendant in each case acted in self-defense.49 The cases meeting the above requirements were put into the confrontation category only when the following factors existed: (1) the man was awake; (2) he behaved in a way that the woman interpreted50 as posing an imminent or immediate threat of death or serious injury to her; and (3) there was evidence that she did not provoke his behavior by unlawful conduct and was not the initial aggressor. A case was classified as confrontational if there was evidence (disputed or not) of record for each element of the definition.51 The same principle of selection was employed in the nonconfrontation category: if the facts of record established that the man was asleep at the time of the killing or that the woman had persuaded someone else to kill him, the case was classified as nonconfrontational. Similarly, if the record contained undisputed evidence52 that the defendant was the initial aggressor, the case was put in the nonconfrontation category, even if the killing occurred during an ongoing, face-to-face struggle.53 The focus of this study on appellate decisions raises the possibility of two types of distortion, neither of which[does NOT] poses a problem for criticizing the conclusions drawn by other scholars from the same sample, but each of which suggests the need for caution before extrapolating the conclusions from the sample to the entire universe of battered women's cases.54 First, the sample excludes cases that were resolved by guilty pleas.55 Second, it excludes cases in which the prosecution dismissed the charges before trial,56 as well as cases in which the defendants were acquitted after trial.57 It is hard to assess the degree of distortion in the confrontation/nonconfrontation breakdown resulting from the omission of guilty pleas due to the wide variety of factors that incline the prosecution and the defense to reach a non-trial disposition.58 The probable distortion from the exclusion of dismissals and acquittals, however, is easier to assess. These cases are likely to have included an over-representation of confrontation cases, while those leading to [If anything] convictions [as well as] are likely to have included an over-representation of nonconfrontation cases.59 The sample of appellate decisions, therefore, is likely to include[s] a greater number of nonconfrontation cases than occurs in the total number of arrests. Two hundred twenty-three cases were identified as meeting the definition established for battered women's homicide cases.60 These cases generated a total of 270 opinions.61 The incidents, rather than the opinions, were used as the base for this portion of the Article's analysis.62 Of the 223 incidents comprising the base, 75% [of instances] involve confrontations.63 Twenty percent are nonconfrontational cases (4% "contract killings,"64 8% sleeping-man cases, and 8% defendant as initial aggressor during a lull in the violence).65 In the remaining 5%, the appellate opinions did not include a discussion of the incident facts introduced at trial.66 As the breakdown indicates, the appellate opinions do not support the conclusion that most battered women kill during nonconfrontational situations. Current work by scholars in other disciplines is consistent with [this] the conclusion that most battered women who kill do so during confrontations. It is estimated that each year in the United States approximately 500 women kill their spouses.67 Most female homicide defendants had been battered by the men whom they killed.68 Studies by sociologists, criminologists, and social psychologists have shown that the vast majority of homicides by women of their partners occur during confrontations.69 These scholars often do not use the term "confrontation." Most describe cases involving ongoing attacks by the decedents as ones resulting from "victim precipitation," a term first used by Marvin Wolfgang to describe killings in which the victim was the first to use physical force against the slayer.70 "Victim precipitation" is a narrower category than the class of cases meeting the legal requirements for a self-defense instruction, since an event is only classified as victim precipitated if the defendant was first to use actual physical force. It is, however, also potentially a broader concept because the force directed at the defendant need not amount to a deadly attack by the victim.71 Even with this different definition the numbers of male-precipitated homicides by women partners are startling. One study of homicides by women against husbands in Detroit between 1982 and 1983 found that 71% of these cases were victim precipitated, in contrast to general homicide populations in which the victim-precipitation rate is between 22% and 37.9%.72 Another study, based on a six- city "random sample" survey of female homicide offenders, found that 83.7% of killings by women of their mates were the result of victim precipitation.73 Still another resulted in the finding that only 12% of all homicides by women were clearly nonconfrontational.74 Both the scholarship based on the national statistics compiled by the FBI and the studies based on more local samples conclude that most women who kill their partners do so in confrontational situations.75